

REMARKS

In the Office Action¹, the Examiner rejected claim 52 under 35 U.S.C. § 101; rejected claims 1-5, 7, 10-14, 17-22, 24, 27-31, 34-37, 39, 42-46, and 49-52 under 35 U.S.C. § 102(e) as being anticipated by U.S. Patent No. 7,124,197 to Ocepek et al. ("*Ocepek*"); rejected claims 6, 23, and 38 under 35 U.S.C. § 103(a) as being unpatentable over *Ocepek* in view of U.S. Patent No. 6,009,423 to Moran ("*Moran*"); rejected claims 8, 25, and 40 under 35 U.S.C. § 103(a) as being unpatentable over *Ocepek* in view of U.S. Patent No. 7,174,373 to Lausier ("*Lausier*"); rejected claims 9, 26, and 41 under 35 U.S.C. § 103(a) as being unpatentable over *Ocepek*, in view of *Lausier*, and further in view of U.S. Patent Application Publication No. 2003/0101353 to Tarquini et al. ("*Tarquini*"); and rejected claims 15, 16, 32, 33, 47, and 48 under 35 U.S.C. § 103(a) as being unpatentable over *Ocepek* in view of U.S. Patent No. 6,580,712 to Jennings et al. ("*Jennings*").

Applicant has amended claim 52. Claims 1-52 remain pending and under current examination.

I. Regarding the rejection of claim 52 under 35 U.S.C. §101

The Examiner rejected claim 52 under 35 U.S.C. §101 because claim 52 "is directed to non-statutory subject matter. A computer program product having a program code does not produce a useful result" (Office Action at page 2).

Applicant has amended claim 52 to recite a "computer program product tangibly embodied in a computer-readable storage medium," thereby positively reciting a

¹ The Office Action contains a number of statements reflecting characterizations of the related art and the claims. Regardless of whether any such statement is identified herein, Applicant declines to automatically subscribe to any statement or characterization in the Office Action.

structure. Therefore, claim 52 falls within the categories of patentable subject matter, and Applicant respectfully requests reconsideration and withdrawal of the rejection of claim 52 under 35 U.S.C. §101.

II. Regarding the rejection of claims 1-5, 7, 10-14, 17-22, 24, 27-31, 34-37, 39, 42-46, and 49-52 under 35 U.S.C. §102(e) as being anticipated by *Ocepek*

Applicant respectfully traverses the rejection of claims 1-5, 7, 10-14, 17-22, 24, 27-31, 34-37, 39, 42-46, and 49-52 under 35 U.S.C. § 102(e) as anticipated by *Ocepek*. In order to properly establish that *Ocepek* anticipates Applicant's claimed invention under 35 U.S.C. § 102, each and every element of each of the claims in issue must be found, either expressly described or under principles of inherency, in that single reference. Furthermore, "[t]he identical invention must be shown in as complete detail as is contained in the ... claim." See M.P.E.P. § 2131, quoting *Richardson v. Suzuki Motor Co.*, 868 F.2d 1126, 1236, 9 U.S.P.Q.2d 1913, 1920 (Fed. Cir. 1989). *Ocepek* fails to teach or suggest each and every element of the claim.

For example, claim 1 recites a method comprising, *interalia*:

receiving from the network a packet with an address; and
indicating that the received packet corresponds to the wireless access device based on the address and on an operating system associated with the received packet.

(emphasis added). *Ocepek* does not disclose each and every element of Applicant's claimed invention.

Ocepek discloses access authorization depending on whether a client device is known or unknown (col. 3, lines 36-51). In *Ocepek*, security device 10 "passively monitors the data link layer for new client devices 24" (col. 5, lines 14-15). The

Examiner cites col. 7, lines 43-47 and Fig. 6 of *Ocepek* to allegedly disclose the claimed “indicating that the received packet corresponds to the wireless access device based on the address and on an operating system associated with the received packet” (Office Action at page 3). This is not correct.

According to Fig. 6 of *Ocepek*, a “correction ARP reply is generated for each protected server 16 and broadcast to all devices” (col. 7, lines 40-41). “The source MAC address is dependent upon the operating system and hardware of protected servers 16” (col. 7, lines 43-44).

Even assuming that the source MAC address of *Ocepek* corresponds to the claimed “address,” which Applicant does not concede, the source MAC address “is dependent upon the operating system and hardware of protected servers 16” (emphasis added). The Examiner states that client devices 24 correspond to the claimed “wireless access device” (Office Action at page 3). Therefore, protected servers 16 are servers, not a “wireless access device.” Any address that may exist in Fig. 6 of *Ocepek* corresponds to the source MAC address that depends on servers 16.

Accordingly, any packet indication that may exist in *Ocepek* indicates that the packet is dependent on servers 16, not client devices 24, which allegedly correspond to the claimed “wireless access device.” Therefore, *Ocepek* does not teach or suggest the claimed “indicating that the received packet corresponds to the wireless access device based on the address and on an operating system associated with the received packet,” as recited in claim 1.

Accordingly, *Ocepek* cannot anticipate claim 1. Thus, claim 1 is allowable for at least these reasons, and claim 17 is also allowable at least due to its depending from claim 1.

Independent claims 2, 18, 19, 34, and 49-52, while of different scope, recite elements similar to those of claim 1 and are thus allowable over *Ocepek* for at least the same reasons discussed above in regard to claim 1. Moreover, claims 3-5, 10-14, 20-22, 24, 27-31, 35-37, 39, and 42-46 are also allowable at least due to their dependence from claims 2, 19, and 34, respectively.

III. Regarding the rejection of claims 6, 23, and 38 under 35 U.S.C. § 103(a) as being unpatentable over *Ocepek* in view of *Moran*

Applicant respectfully requests that the Examiner reconsider and withdraw the rejection of claims 6, 23, and 38 under 35 U.S.C. § 103(a) because a *prima facie* case of obviousness has not been established with respect to these claims.

To establish a *prima facie* case of obviousness, the prior art, taken separately or in combination, must teach or suggest all the claim limitations. See M.P.E.P. § 2142, 8th Ed., Rev. 5 (August 2006). Moreover, "in formulating a rejection under 35 U.S.C. § 103(a) based upon a combination of prior art elements, it remains necessary to identify the reason why a person of ordinary skill in the art would have combined the prior art elements in the manner claimed." USPTO Memorandum from Margaret A. Focarino, Deputy Commissioner for Patent Operations, May 3, 2007, page 2.

A *prima facie* case of obviousness has not been established because, among other things, the prior art, taken alone or in combination, fails to teach or suggest each and every element recited by claims 6, 23, and 38.

Claims 6, 23, and 38 depend from claims 2, 19, and 34, respectively, and thus require each and every element of claims 2, 19, and 34. As set forth above, *Ocepek* fails to teach each and every element of claims 2, 19, and 34. Moreover, *Moran* fails to cure the deficiencies of *Ocepek*. The Examiner relies on *Moran* for allegedly disclosing "comparing based on determination of whether a portion of the address is similar to a portion of at least one of the registered addresses" (Office Action at page 11). Even assuming this assertion is true, which Applicant does not concede, *Moran* does not cure the deficiencies of *Ocepek* noted above.

Moran discloses providing "a search structure which can be efficiently searched and which when implemented in the context of a bridge . . . enables the efficient location of data associated with a given 6-byte address" (col. 2, lines 3-6). However, *Moran* does not teach or suggest the claimed "indicating that the received packet corresponds to the wireless access device based on the address and on an operating system associated with the received packet," as recited in claim 1.

Because the prior art, taken alone or in combination, fails to teach or suggest each and every element recited by independent claims 2, 9, and 34 and required by dependent claims 6, 23, and 38, no *prima facie* case of obviousness has been established with respect to claims 6, 23, and 38. Accordingly, Applicant respectfully requests that the Examiner withdraw the rejection of claims 6, 23, and 38 under 35 U.S.C. § 103(a) as being unpatentable over *Ocepek* in view of *Moran*.

IV. Regarding the rejection of claims 8, 25, and 40 under 35 U.S.C. § 103(a) as being unpatentable over *Ocepek* in view of *Lausier*

Applicant respectfully requests that the Examiner reconsider and withdraw the rejection of claims 8, 25, and 40 under 35 U.S.C. § 103(a) because a *prima facie* case of obviousness has not been established with respect to these claims.

Claims 8, 25, and 40 depend from claims 2, 19, and 34, respectively, and thus require each and every element of claims 2, 19, and 34. As set forth above, *Ocepek* fails to teach each and every element of claims 2, 19, and 34. Moreover, *Lausier* fails to cure the deficiencies of *Ocepek*. The Examiner relies on *Lausier* for allegedly disclosing “determining the operating system at the IP address associated with the address” (Office Action at page 11). Even assuming this assertion is true, which Applicant does not concede, *Lausier* does not cure the deficiencies of *Ocepek* noted above.

Lausier discloses a “system of internet broadcasting in which multimedia content is delivered to internet users bypassing most internet backbone” (col. 3, lines 53-55). However, *Lausier* does not teach or suggest the claimed “indicating that the received packet corresponds to the wireless access device based on the address and on an operating system associated with the received packet,” as recited in claim 1.

Because the prior art, taken alone or in combination, fails to teach or suggest each and every element recited by independent claims 2, 9, and 34 and required by dependent claims 8, 25, and 40, no *prima facie* case of obviousness has been established with respect to claims 8, 25, and 40. Accordingly, Applicant respectfully requests that the Examiner withdraw the rejection of claims 8, 25, and 40 under 35 U.S.C. § 103(a) as being unpatentable over *Ocepek* in view of *Lausier*.

V. Regarding the rejection of claims 9, 26, and 41 under 35 U.S.C. § 103(a) as being unpatentable over *Ocepek*, *Lausier*, and further in view of *Tarquini*

Applicant respectfully requests that the Examiner reconsider and withdraw the rejection of claims 9, 26, and 41 under 35 U.S.C. § 103(a) because a *prima facie* case of obviousness has not been established with respect to these claims.

Claims 9, 26, and 41 depend from claims 2, 19, and 34, respectively, and thus require each and every element of claims 2, 19, and 34. As set forth above, *Ocepek* and *Lausier* fail to teach each and every element of claims 2, 19, and 34. Moreover, *Tarquini* fails to cure the deficiencies of *Ocepek* and *Lausier*. The Examiner relies on *Tarquini* for allegedly disclosing “determining the operating system using an nmap” (Office Action at page 12). Even assuming this assertion is true, which Applicant does not concede, *Tarquini* does not cure the deficiencies of *Ocepek* and *Lausier* noted above.

Tarquini discloses “a method of detecting an intrusion at a node of a network” (paragraph 0014). However, *Tarquini* does not teach or suggest the claimed “indicating that the received packet corresponds to the wireless access device based on the address and on an operating system associated with the received packet,” as recited in claim 1.

Because the prior art, taken alone or in combination, fails to teach or suggest each and every element recited by independent claims 2, 9, and 34 and required by dependent claims 9, 26, and 41, no *prima facie* case of obviousness has been established with respect to claims 9, 26, and 41. Accordingly, Applicant respectfully requests that the Examiner withdraw the rejection of claims 9, 26, and 41 under 35

U.S.C. § 103(a) as being unpatentable over *Ocepek*, *Lausier*, and further in view of *Tarquini*.

VI. Regarding the rejection of claims 15, 16, 32, 33, 47, and 48 under 35 U.S.C. § 103(a) as being unpatentable over *Ocepek* in view of *Jennings*

Applicant respectfully requests that the Examiner reconsider and withdraw the rejection of claims 15, 16, 32, 33, 47, and 48 under 35 U.S.C. § 103(a) because a *prima facie* case of obviousness has not been established with respect to these claims.

Claims 15, 16, 32, 33, 47, and 48 depend from claims 2, 19, and 34, respectively, and thus require each and every element of claims 2, 19, and 34. As set forth above, *Ocepek* fails to teach each and every element of claims 2, 19, and 34. Moreover, *Jennings* fails to cure the deficiencies of *Ocepek*. The Examiner relies on *Jennings* for allegedly disclosing “storing the plurality of the organizationally unique identifiers, such that a more frequently encountered organizationally unique identifier is searched before a less frequently encountered organizationally unique identifier” (Office Action at page 13). Even assuming this assertion is true, which Applicant does not concede, *Jennings* does not cure the deficiencies of *Ocepek* noted above.

Jennings discloses “the use of a specific or dedicated engine to execute the algorithm” (col. 2, lines 50-51). However, *Jennings* does not teach or suggest the claimed “indicating that the received packet corresponds to the wireless access device based on the address and on an operating system associated with the received packet,” as recited in claim 1.

Because the prior art, taken alone or in combination, fails to teach or suggest each and every element recited by independent claims 2, 9, and 34 and required by

dependent claims 15, 16, 32, 33, 47, and 48, no *prima facie* case of obviousness has been established with respect to claims 15, 16, 32, 33, 47, and 48. Accordingly, Applicant respectfully requests that the Examiner withdraw the rejection of claims 15, 16, 32, 33, 47, and 48 under 35 U.S.C. § 103(a) as being unpatentable over *Ocepek* in view of *Jennings*.


VII. Conclusion

In view of the foregoing amendments and remarks, Applicant respectfully requests reconsideration of this application and the timely allowance of the pending claims.

Please grant any extensions of time required to enter this response and charge any additional required fees to our deposit account 06-0916.

Respectfully submitted,

Dated: August 23, 2007

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